

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

IMPLICIT, LLC,	§	
Plaintiff,	§	
	§	
v.	§	
	§	
IMPERVA, INC.	§	Case No. 2:19-cv-00040-JRG-RSP
	§	LEAD CASE
	§	
FORTINET, INC.	§	Case No. 2:19-cv-00039-JRG-RSP
	§	
	§	
JUNIPER NETWORKS, INC.	§	Case No. 2:19-cv-00037-JRG-RSP
	§	
	§	
SOPHOS LTD.	§	Case No. 2:19-cv-00042-JRG-RSP
	§	
Defendants.	§	

**JOINT MOTION FOR ENTRY OF DISPUTED DISCOVERY ORDER**

Pursuant to the Court’s Order dated July 1, 2019, Plaintiff Implicit, LLC and Defendants Imperva, Inc., Fortinet, Inc., Juniper Networks, Inc., and Sophos Ltd. (collectively, “Defendants”) respectfully move for entry of a discovery order in this action. The parties agree to the attached proposed discovery order except for the following three provisions, which are in dispute:

1. In Paragraph 5(b), the number of requests for admission that may be served by each party other than common requests for admission and requests for admission not directed to establishing the authenticity of documents. Plaintiff proposes 10 requests for admission; Defendants propose 20 requests for admission.

- a. **Plaintiff’s Position:** Plaintiff does not believe it should be put in the position of fielding a combined 80 requests for admission, which will be unduly burdensome.

- b. **Defendants' Position:** Plaintiff would only need to respond to 20 requests for admission for each individual defendant, and Plaintiff will have an opportunity to submit the same number of requests for admission to each individual defendant. Although the Court consolidated the action, there are separate facts and issues to address during discovery for each individual defendant, and 20 requests for admission for each individual defendant is not an amount that is unduly burdensome.
- 2. In Paragraph 5(c)(3), the number of hours to be allotted for third party depositions. Plaintiff proposes that each Side be allotted 36 hours of third party deposition time and that Plaintiff will promptly produce the transcripts of depositions of third party witnesses taken in the currently-pending cases against NetScout Systems, Inc. and Sandvine Corporation to the extent Plaintiff can do so without violating the Protective Order entered in those cases; Defendants propose each Side be allotted 49 hours of third party deposition time.
  - a. **Plaintiff's Position:** Many of the third parties that defendants will likely wish to depose, *e.g.*, purported inventors of purported prior art, have already been deposited at least once (and some twice) in other cases. There is no need to burden the parties (and those third party witness) with further depositions on the exact same issues. Plaintiff therefore seeks to restrict the amount of third party deposition time allotted to each party to a reasonable amount.
  - b. **Defendants' Position:** Given Implicit's licensing, patent prosecution, and litigation history, Defendants may want or need to depose a variety of third parties, *e.g.*, third-party licensees and component suppliers for the accused

products. Also, unlike Implicit, Defendants have not participated in the depositions of the third parties that Implicit claims to be concerned about, and some Defendants may choose to depose these third parties, even if Implicit produces the transcripts it is already obligated to produce. In light of the number of potential third party witnesses, Defendants' proposal of 49 hours of deposition time is reasonable.

3. In Paragraph 5(c)(7), the number of hours allocated for expert depositions of expert whose report addresses issues specific to more than one defendant. Plaintiff proposes 1 additional hour per Defendant; Defendants propose 3 additional hours per defendant.
  - a. **Plaintiff's Position:** Plaintiff's invalidity expert should not be subject to 7 hours plus 3 hours per defendant for a total of 19 hours on one expert report. That is excessive and beyond the needs of the case. A total of 11 hours ought to be sufficient.
  - b. **Defendants' Position:** Although the Court consolidated the action, these are still separate cases, so giving each individual defendant just 3 additional hours to depose an expert on issues specific to that defendant will not be excessive and beyond the needs of the case. Moreover, as defendants' proposed language shows, the defendants do not automatically get these additional hours, but only "if an expert report from plaintiff addresses issues specific to more than one defendant."

Dated: July 15, 2019

By: /s/Christopher L. Larson

Michael J. Sacksteder  
(CA Bar No. 191605)  
Jessica Lee Benzler  
(CA Bar No. 306164)  
Christopher L. Larson  
(CA Bar No. 308247)  
**FENWICK & WEST LLP-San Francisco**  
555 California Street  
12th Floor  
San Francisco, CA 94104  
415/875-2300  
Facsimile: (415) 281-1350  
Email: msacksteder@fenwick.com;  
jbenzler@fenwick.com;  
clarson@fenwick.com

GEOFFREY ROBERT MILLER  
(TX State Bar No. 24094847)  
**FENWICK & WEST LLP-Mtn. View**  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
650-988-8500  
Facsimile: (650) 938-5200  
gmiller@fenwick.com

*Counsel for Defendant Imperva, Inc.*

By: /s/Alice E. Snedeker

Deron R. Dacus  
State Bar No. 00790553  
**THE DACUS FIRM, P.C.**  
821 ESE Loop 323, Suite 430  
Tyler, TX 75701  
Phone: (903) 705-1117  
Fax: (903) 581-2543  
ddacus@dacusfirm.com

Matthew C. Gaudet (GA SBN 287789)  
Admitted E.D. Tex.  
David C. Dotson (GA SBN 138040)

Respectfully submitted,

By: /s/Brandon C. Martin

Spencer Hosie, pro hac vice,  
(CA Bar No. 101777)  
shosie@hosielaw.com  
Diane S. Rice, pro hac vice,  
(CA Bar No. 118303)  
drice@hosielaw.com  
Brandon C. Martin, pro hac vice,  
(CA Bar No. 269624)  
bmartin@hosielaw.com  
Darrell Rae Atkinson, pro hac vice,  
(CA Bar No. 280564)  
datkinson@hosielaw.com  
Francesca M.S. Germinario, pro hac vice,  
(CA Bar No. 326208)  
fgerminario@hosielaw.com  
HOSIE RICE LLP  
600 Montgomery St., 34th Floor  
San Francisco, CA 94111  
415.247.6000  
Fax: 415.247.6001

William E. Davis, III (TX Bar No. 24047416)  
bdavis@bdavisfirm.com  
Christian J. Hurt (TX Bar No. 24059987)  
churt@bdavisfirm.com  
Edward Chin (Of Counsel)  
(TX Bar No. 50511688)  
echine@bdavisfirm.com  
Debra Coleman (Of Counsel)  
(TX Bar No. 24059595)  
dcoleman@bdavisfirm.com  
THE DAVIS FIRM, PC  
213 N. Fredonia Street, Suite 230  
Longview, Texas 75601  
Telephone: (903) 230-9090  
Facsimile: (903) 230-9661

Counsel for Plaintiff Implicit, LLC

Admitted E.D. Tex.

John R. Gibson (GA SBN 454507)

Admitted E.D. Tex.

Alice E. Snedeker

Admitted E.D. Tex.

**DUANE MORRIS LLP**

1075 Peachtree NE, Suite 2000

Atlanta, GA 30309

Telephone: 404.253.6900

Facsimile: 404.253.6901

Email: mcgaudet@duanemorris.com;

dcdotson@duanemorris.com;

jrgibson@duanemorris.com

aesnedeker@duanemorris.com

Christopher J. Tyson (VA SBN 81553)

Admitted E.D. Tex.

**DUANE MORRIS LLP**

505 9th Street, N.W., Suite 1000

Washington, DC 20004-2166

Tel: 202.776.7800

Fax: 202.776.7801

Email: cjtysen@duanemorris.com

*Counsel for Defendant Fortinet, Inc.*

By: /s/Ingrid Marie Haslund Peterson

**IRELL & MANELLA LLP-Newport  
Beach**

David McPhie

(CA Bar No. 231520) [Pro Hac Vice]

Ingrid Marie Haslund Peterson

(CA Bar No. 313927) [Pro Hac Vice]

840 Newport Center Drive, Suite 400

Newport Beach, CA 92660

Telephone: (949) 760-0991

Facsimile: (949) 760-5200

Email: dmcphie@irell.com;

ipeterson@irell.com

**IRELL & MANELLA LLP-Los Angeles**

Jonathan S. Kagan

(CA Bar No. 166039) [Pro Hac Vice]

1800 Avenue of the Stars, Suite 900

Los Angeles, CA 90067-4276

Telephone: (310) 277-1010  
Facsimile: (310) 203-7199  
Email: jkagan@irell.com

**GILLAM & SMITH LLP**

Melissa R. Smith  
(Texas Bar No. 24001351)  
303 South Washington Avenue  
Marshall, TX 75670  
Telephone: (903) 934-8450  
Facsimile: (903) 934-9257  
Email: melissa@gillamsmithlaw.com

*Attorneys for Defendant Juniper Networks,  
Inc.*

By: /s/Sarah J. Fischer

Douglas J. Kline (BBO #556680)  
Robert Frederickson (BBO #670111)  
Sarah J. Fischer (BBO #688878)

**GOODWIN PROCTER LLP**

100 Northern Avenue  
Boston, MA 02210  
Tel.: 617-570-1000  
Fax: 617-523-1231  
dkline@goodwinlaw.com  
rfrederickson@goodwinlaw.com  
sfischer@goodwinlaw.com

Jennifer P. Ainsworth (Texas Bar  
Card #00784720)

**WILSON, ROBERTSON &  
CORNELIUS, P.C.**

909 ESE Loop 323, Suite 400  
Tyler, Texas 75701  
Tel.: 903-509-5000  
Fax: 903-509-5092  
Email: jainsworth@wilsonlawfirm.com

*Attorneys for Sophos Ltd.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document is being filed electronically in compliance with Local Rule CV-5(a). As such, this document is being served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(V). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), any counsel of record not deemed to have consented to electronic service will be served with a true and correct copy of the foregoing by email on this 15th day of July 2019.

/s/ Brandon C. Martin  
Brandon C. Martin